**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, DC 20554**

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| In the Matter of | ) | |
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| Wireless E911 Location Accuracy Requirements | ) | PS Docket No. 07-114 |
| | ) | |
| Revision of Commission's Rules to Ensure Compatibility of Enhanced 911 emergency Calling Systems | ) | CC Docket No. 94-102 |
| | ) | |
| Association of Public-Safety Communications Officials-International, Inc. Request for Declaratory Ruling | ) | |
| | ) | |
| 911 Requirements for IP-Enabled Service Providers | ) | WC Docket No. 05-196 |

To: The Commission

## COMMENTS OF CORR WIRELESS COMMUNICATIONS, LLC ON SECTION III.A OF PROPOSAL

Corr Wireless Communications, LLC ("Corr") submits these comments in response to the Commission's June 1, 2007 Notice of Proposed Rulemaking in this Docket. Corr believes that the Commission's proposal to impose PSAP-based E-911 compliance measurements is precipitous, illogical and counter-productive. The long-term solution to enhancing compliance and accuracy lies in mandatory inclusion of A-GPS technology in GSM handsets, a proposal which Corr will explain in the next round of comments. If that single nostrum were applied to the issue, over a period of a few years both compliance and accuracy would be significantly

enhanced without the need for continual testing and without the need for most of the other oppressive enforcement measures contemplated by the NPRM.

Corr is a relatively small regional cellular and PCS carrier operating in northern Alabama and adjacent counties. Corr, like many other small (and some large) carriers with legacy TDMA systems, struggled to meet the Commission's original E-911 accuracy requirements. A handset-based solution was not available to these carriers, and the network solutions which had been touted to the Commission by network solution vendors proved to be far less reliable than the Commission and the industry had been led to believe. It took years, and over a million dollars to purchase, install and implement systems which often failed to deliver as promised. Small carriers had especially difficult problems because the vendors would only support systems which the largest carriers were interested in, and when those carriers went in different directions, the vendors simply abandoned representations about accuracy and delivery dates which the Commission had accepted as gospel when it imposed E-911 accuracy requirements.

Rural carriers using the network-based solution also had unique problems caused by the laws of physics butting up against the regulations of the FCC. As rural carriers demonstrated repeatedly, it was simply scientifically impossible to meet the Commission's accuracy requirements in thinly served areas where insufficient cell sites were present to permit the needed triangulation. Carriers sometimes found themselves with a Hobson's choice of either providing no service at all to remote areas (because the small number of cell sites adequate for voice

coverage would not deliver the required E-911 accuracy) or violating the Commission's E-911 rules. This was a perfect example of "the best is the enemy of the good" because people who might have had perfectly acceptable access to public safety personnel in an emergency were getting no access at all because the carrier did not want to violate the E-911 accuracy rules. It is difficult to see how this served the public interest. That principle is important for the Commission to consider as it considers modifications to the E-911 rules: public safety should be enhanced, not diminished, by whatever rules are adopted.

### A. Compliance Should Be Measured on an MTA Basis

The Commission's rules do not specify how the accuracy thresholds established by Section 20.18(h) are to be measured. Corr has taken the position that the best and most useful metric is to measure accuracy on a system-wide basis. By system, we mean an integrated network of base stations covering a single MTA and controlled by a single switch or set of switches. A single, unified system is the unit most often used by real carriers to monitor and measure system performance of all kinds – outages, blocked calls, revenue, subscribership, loading, etc. It is also typically a discrete unit for purposes of operational management, employment, marketing, maintenance and sales. In other words, CMRS systems usually function in areas which may consist of a core city and surrounding suburbs and exurbs or, in rural areas, a group of counties which can be managed and maintained from a single office. The Commission has set out firm definitions for MTAs which accord roughly with unified management areas. By using a reasonably sized, readily

defined geographic area, all interested parties can avoid disputes over exactly what is included in the discrete "system" of the CMRS carrier. At the same time, an MTA is typically large enough to embrace the whole of most operating systems while also being small enough to constitute a single identifiable market area.

Unlike PSAP jurisdictions, MTAs constitute "real world" organizational units that the Commission recognizes for many purposes (*e.g.*, employment reporting, system outages, CALEA compliance, etc.) It makes sense to use functional and practical real world units to measure system performance of whatever kind rather than breaking that functional unit down into artificial sub-units that bear no relationship to the way the system is technically designed or the way it is managed and run.

To be sure, functional operating units can occasionally be larger than MTAs, but we felt that a meaningful metric for something like E-911 would have to be tied to a relatively unified and distinct geographic area. That is why we suggest that the metric be no bigger than an MTA. This ensures that the measured accuracy rates are not skewed by heavy loading associated with dense urban areas while rural areas get sparser coverage.

By contrast, measurement over a PSAP area is completely illogical. PSAP boundaries are wholly unrelated to the operational characteristics of the system – cells are situated to provide coverage where it is needed most, not necessarily where a county boundary falls. A system must be judged by where the cells actually are – based on traffic patterns, economics, siting issues, terrain, spectrum limitations and

all the other factors that influence cell location – rather than geographic boundaries having nothing to do with system operation. A PSAP-based measurement system could have the effect of one jurisdiction falling slightly short in accuracy while its neighboring county exceeds the requirement in accuracy. On a rational, system-wide basis designed to best serve the needs of the public, the *system* should be deemed to be performing well because the system as it exists is serving the public at the specified accuracy level.

In Corr's relatively small portion of Alabama, Georgia and Tennessee, there are at least nineteen separate PSAPs. Corr's experience is that each community in its footprint, no matter how tiny, wants its own PSAP. In some cases this results in a PSAP-within-a-PSAP scenario, as when a town has its own PSAP inside a county PSAP or an army base has its own PSAP within a county. Some PSAPs have requested Phase I but not Phase II because they are not set up to handle Phase II. Meanwhile, the network has been designed to serve real mobile traffic, including emergency services at the accuracy thresholds specified by the rules -- not to provide hypothetical service to theoretical emergencies in artificial PSAP boundaries where there may or may not be users. (Some of the PSAPs in Corr's footprint have no, or virtually no, customers in them, so it makes no sense to either concentrate service there or measure accuracy there.) Trying to do accuracy testing separately within every PSAP boundary under these circumstances would be meaningless. Yet a PSAP-based measurement would require exactly that.

The Commission needs to understand that many of the areas Corr serves do not have running water or sewer – this is because the local water boards have made the rational economic assessment that it is simply too costly to construct an entire water and sewage infrastructure to serve a relative handful of customers. That is a straightforward application of the laws of economics. By the same token, to require at least three cell sites to be constructed so as to cover every rural customer for the purpose of locating them in an emergency is commercially unreasonable. Wireless carriers serving rural areas may end up having to make the same economic decision the local water boards make: *not* to serve some areas because it is uneconomical to do so. A PSAP-based E-911 system would skew the economic dynamics of service provision in a counterproductive and possibly even harmful way. That said, the Commission should also recognize that in rural areas the degree of accuracy necessary to locate someone is often considerably lower than that required in an urban environment. In an area where there is only one house per mile, for example, it's not hard to locate that house along a stretch of road.

## B. Need to Adapt to Radical Changes in Defined Measurement Area

The NPRM proposes a rather abrupt rush to judgment on the question of how to measure E-911 accuracy. This issue has been out there for many years now, and many carriers have duly based their compliance designs and measurements on some reasonable metric unit such as the one proposed by Corr above. Depending on what the Commission decides to use as a metric, many carriers would find

themselves instantaneously in violation through no fault of their own. Adopting a new metric has enormous implications not only for possible violation of the rules but for far-reaching questions of system design and cell layout which could take literally years to sort out and solve. The Commission should not underestimate the momentousness of the impact of a change or concretization of measurement method because it could have very profound consequences for many carriers.

The Commission's sudden decision to tentatively adopt the APCO proposal for a PSAP based measurement system and to do so on a highly abbreviated two-week comment schedule over the Fourth of July holiday fails to recognize the gravity and complexity of the issues presented. This issue is far too important to be rushed through in haste and without thorough exposition of all angles. Corr agrees that the issue is an important one which deserves resolution by the Commission, but for that very reason it is not one which should be railroaded without full consideration of the realities of the systems that have been constructed at collectively hundreds of millions of dollars in expense in response to the original adoption of the E-911 rules. If the lessons of E-911 have taught us anything, it is that no one benefits by the imposition of unrealistic requirements which cannot reasonably be met by people in the real world. That is why the Commission had to keep granting extensions of the E-911 compliance dates to a host of carriers who just couldn't comply no matter how hard they tried.

Corr can appreciate the frustration of the public safety community with any process that requires years to complete, but here we have the assurance

that carriers are already in compliance to a large extent with the strict accuracy standards of the current rule. The enhancement of safety to the public, if any, would be marginal. Without knowing what the new metric might be, Corr cannot say for itself how long it would take to come into compliance, but its past experience with the initial E-911 rollout was certainly that small carriers were shunted to the end of the vendor line when it came to industry-wide mandates, and no matter how hard they pressed, they simply could not get the systems or equipment they needed on the schedule the Commission expected. The issue of lead time to effectiveness of the new rule is therefore critical, and one where input from equipment vendors is essential.

### C. Any New Measurement Standard Should be Adopted as New Rule With Lead Time to Comply

If the Commission adopts a reasonable metric for E-911 compliance, it should be done with the full understanding that it may take network-based carriers literally years to comply if their systems have not been designed and implemented to that standard. Some carriers may have to retrofit their systems entirely. Yet the Commission apparently is considering adopting the new measurement standard as an immediate requirement and then deferring enforcement until carriers can reasonably be expected to come into compliance.

The distinction between adopting a new rule with a future effective date and adopting a new "interpretation" of an existing rule with a future enforcement date may seem minor, but it has huge significance for the industry subject to the rules.

A "deferral of enforcement" approach leaves the affected carriers (and we believe there will be hundreds of them) in a state of non-compliance with the rules. This could be deemed to be grounds for denial of a renewal expectancy at the time that renewal applications are filed. (See Section 24.16(b) of the Commission's rules) Because a renewal expectancy is critical to a carrier's construction, expansion and financial plans, the Commission should not lightly put these valuable applications at risk through no fault of the carriers'.

Similarly, most carriers of any size have financing agreements in place to get access to the capital necessary to build out and operate their systems. Virtually all financing agreements contain covenants that require periodic certifications of compliance with regulatory requirements. Regardless of whether the Commission is enforcing the rule, the carriers would need to confess non-compliance, an admission that in many cases, including Corr's, triggers punitive increases in the rate of interest – and can even constitute a default under some agreements justifying cancellation of the lending facilities and accelerated debt repayment. If regulatory compliance covenants now in effect were applied strictly over a broad gamut of the industry, the Commission's treatment of this single issue could lead to loan defaults, foreclosures, bankruptcies, and service shutdowns in a classic case of mushrooming unintended consequences.

Apart from the adverse licensing and financial consequences of a deferred enforcement approach, it is contrary to the Administrative Procedures Act. The United States Court of Appeals for the District of Columbia Circuit has often had to

consider whether agency actions qualify as interpretive rules not requiring formal notice-and-comment rulemaking procedures and compliance with the Regulatory Flexibility Act[1], most recently in *Central Texas Telephone Cooperative, Inc. v. FCC*, 402 F. 3d 205 (DC Cir. 2005). There the Court determined that the Commission's issuance of a Declaratory Ruling on the existence of certain local number porting obligations was not a "legislative" rule requiring compliance with the APA and RFA because it did not impose new obligations other than those set by the original Report and Order on local number porting. It was, rather, an "interpretive" rule which did not require those administrative procedures. As the Court described interpretive rules, they must "derive a proposition from an existing document whose meaning compels or logically justifies the proposition. The substance of the derived proposition must flow fairly from the substance of the existing document." *Central Texas* at 212.

Here the Commission proposes to impose a basis for measurement which is found nowhere within the existing document (47 C.F.R. Section 20.18). As the comments above demonstrate, a metric other than PSAPs is not only perfectly valid for E-911 purposes but even more appropriate than a PSAP-based system. No particular metric is "compelled by" or logically justified by the existing accuracy requirements – any of a full slate of options could be pulled from the shelf and applied as policy considerations warrant. But that is at basis a *legislative* process – not an interpretive one. While some measurement process is clearly required, the adoption of one particular metric – particularly one based on geographic territories

[1] 5 U.S.C. Section 604.

which bear no relationship to network operational requirements – is created entirely out of whole cloth. If the Commission, for example, "interpreted" the current rule to require compliance with the accuracy standards on a "per customer" basis, no one would doubt that an entirely new obligation not foreseen or contemplated by anyone in 1998 had been imposed. Yet the proposal to measure accuracy on a PSAP basis is only marginally less burdensome than a per customer measure.

Because the imposition of a new, potentially more burdensome metric is not fairly deemed a "clarification" or "interpretation" of the existing rule, the Commission may not apply the new rule at once and deem carriers to be in violation of the rule if they are not immediately in compliance. (The Commission seems to have recognized the legislative nature of its undertaking by including an RFA analysis in its proposal.) Yet it would plainly be arbitrary and capricious to impose instantaneously a new rule requiring in many instances major revamping of the existing network design and facility layout. This is so regardless of whether enforcement of the rule is delayed for some period of time. Corr therefore urges the Commission to comply with the APA and impose any new metric as a rule only on a going forward basis and only after carriers have had a reasonable opportunity to comply.

Respectfully submitted,

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